

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail, First-Class Package  
Service & Parcel Select Contracts  
Priority Mail, First-Class Package  
Service & Parcel Select Contract 5

Docket No. MC2023-105

Competitive Product Prices  
Priority Mail, First-Class Package  
Service & Parcel Select Contract 5 (MC2023-105)  
Negotiated Service Agreements

Docket No. CP2023-106

CHAIRMAN'S INFORMATION REQUEST NO. 1

(Issued January 23, 2023)

To clarify the Postal Service's request to add Priority Mail, First-Class Package Service & Parcel Select Contract 5 to the competitive product list, filed December 28, 2022,<sup>1</sup> the Postal Service is requested to provide a written response to the following questions. The response is due no later than January 30, 2023.

1. Please refer to paragraph 1.27 of the agreement, which defines the term "subcontractor" to mean: "... any person or entity acting under written contract, or as an Affiliate of Postal Service, to perform Services on Postal Service's behalf or to fulfill Postal Service's obligations under this Contract." Request, Attachment B at 4. Please identify all categories of Postal Service contractors that qualify as

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<sup>1</sup> USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 5 to Competitive Product List and Notice of Filing Materials Under Seal, December 28, 2022 (Request).

subcontractors under this agreement, including, but not limited to, third-party providers of air and/or ground transportation.

2. Please confirm that the Postal Service's contracts with all "subcontractors" identified in the response to question 1 already meet the requirements of paragraph 21.2(b)(i-iv). See *id.* at 28-29. If not confirmed, please indicate the projected administrative costs of revising all such contracts to conform to the requirements of that paragraph and refile the supporting financial workpapers to include such costs and all supporting calculations.
3. Please refer to paragraph 21.2 of the agreement, which states: "Customer shall have the right to reasonably disapprove of any Subcontractors, by written notice to Postal Service, in which case Postal Service shall substitute a new Subcontractor within a reasonable period of time." *Id.* at 29. Please discuss the impact on the Postal Service's operations if the contract partner exercises its option under paragraph 21.2 to disapprove of particular "subcontractors" identified in the answer to question 1. (For example, if the contract partner objects to a particular third-party transportation provider, the requested discussion should address how the Postal Service's operations would be affected by the need to segregate the contract partner's packages for transport by a different provider.) Please additionally discuss the potential cost impact of any accompanying operational changes necessary to comply with the terms of paragraph 21.2 and refile the supporting financial workpapers to include such costs and all supporting calculations.
4. Please refer to paragraph 21.2 of the agreement, which states: "Customer reserves any rights of termination against such Subcontractors pursuant to Section 3.2 (Termination for Cause by Customer)." *Id.* Please confirm that the contract partner's right of termination against a subcontractor under this provision is limited to terminating this entire negotiated service agreement. If not confirmed, please explain.

5. Please confirm that the Special Logistics Services offered by the Postal Service under paragraph 4.4 of this agreement are limited to the operational details covered by the Memorandum of Understanding described under paragraph 6.18, when the latter paragraph is interpreted consistent with Commission guidance in Order No. 6401.<sup>2</sup> If not confirmed, please describe in detail the extent of the Special Logistics Services the Postal Service will provide the customer and indicate where in the supporting financial workpapers the costs of providing such services are reported. If such costs were not reported, please refile the supporting financial workpapers to include the costs of providing such services and all supporting calculations.
6. Please explain the extent to which each of the following contractual provisions affecting the Postal Service's liability for damaged packages differs from the Postal Service's liability for damaged packages of general applicability. For each listed contract provision, please include an estimate of the costs incurred by assuming such liability, a description of how that estimate was calculated, and indicate where in the supporting financial workpapers such costs are reported. For any listed provision where the Postal Service projects a nonzero cost and such costs were not reported in the supporting financial workpapers, please refile the financial workpapers to include such costs and all supporting calculations.
  - a. Paragraph 9.1, concerning the standard of liability.
  - b. Paragraph 9.4, placing burden of proof on the Postal Service.
  - c. Paragraph 9.5, extending Postal Service's burden of proof to claims filed within 15 days after delivery.
  - d. Paragraph 10.3, waiving limits on liability.

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<sup>2</sup> See *id.* at 6, 20; Docket Nos. MC2023-93 and CP2023-94, Order Adding Parcel Select Contract 56 to the Competitive Product List and Providing Guidance, January 11, 2023, at 6-7 (Order No. 6401).

- e. Paragraph 11.
  - f. Paragraph 12.2, waiving the Postal Service's ability to contest a claim after seven business days.
  - g. Paragraph 22.1, setting the limitations period for damage claims.
7. Please explain the extent to which each of the following contractual provisions affecting the Postal Service's liability and recourse during the course of its operations differs from the Postal Service's liability and recourse during typical operations. For each listed contract provision, please include an estimate of the costs incurred by assuming such liability, a description of how that estimate was calculated, and indicate where in the supporting financial workpapers such costs are reported. For any listed provision where the Postal Service projects a nonzero cost and such costs were not reported in the supporting financial workpapers, please refile the financial workpapers to include such costs and all supporting calculations.
- a. Paragraph 9.3, setting exceptions to liability that may differ from the exceptions that apply during typical operations.
  - b. Paragraph 9.6, concerning Postal Service liability for personal injury and property damage.
  - c. Paragraph 9.7, disclaiming contract partner liability for Postal Service losses.
  - d. Paragraphs 10.1 and 10.2, calculating the amount of liability for product damage by a method that may differ from the amount of liability incurred during typical operations.
  - e. Paragraph 10.3, waiving limits on liability.
8. Please explain the extent to which each of the following contractual provisions affecting the Postal Service's legal liability differs from the Postal Service's legal

liability in its contractual relationships for typical negotiated service agreements. For each listed contract provision, please include an estimate of the costs incurred by assuming such liability, a description of how that estimate was calculated, and indicate where in the supporting financial workpapers such costs are reported. For any listed provision where the Postal Service projects a nonzero cost and such costs were not reported in the supporting financial workpapers, please refile the financial workpapers to include such costs and all supporting calculations.

- a. Paragraph 10.3, waiving limits on liability.
  - b. Paragraph 16.3, acknowledging irreparable harm and consenting to injunctive relief.
  - c. Paragraph 19, indemnifying contract partner for defense costs, attorneys' fees, and judgements.
  - d. Paragraph 22.2, agreeing to litigate all claims in federal courts in a particular state, applying federal law and the law of that state.
9. Please confirm that the extent of technical support to be provided to the contract partner under paragraph 17.2, including but not limited to maintenance of a tracking system in compliance with Customer specifications, does not differ from the support the Postal Service provides to partners of typical negotiated service agreements. *See id.* at 25. If not confirmed, please explain the extent of the differences and indicate where in the supporting financial workpapers the additional costs of providing that expanded technical support are reported. If such costs were not reported, please refile the supporting financial workpapers to include the costs of providing such support and all supporting calculations.
10. Please confirm that the Postal Service's obligations under paragraphs 17.5 through 17.9 can be met using existing Postal Service information technology resources at no additional cost to the Postal Service. *See id.* at 26. If not

confirmed, please identify the changes to equipment or procedures necessary to comply with these provisions and indicate where in the supporting financial workpapers the additional costs of such changes are reported. If such costs were not reported, please refile the supporting financial workpapers to include such costs and all supporting calculations.

11. Please confirm that, other than as specified in the responses to questions 1-10 and identified in the refiled supporting financial workpapers, all of the costs of meeting the Postal Service's obligations under this contract are accurately and completely identified in the supporting financial workpapers. If not confirmed, please identify all other terms of the contract that could lead to additional costs and include all such costs and supporting calculations in the refiled supporting financial workpapers.

By the Chairman.

Michael Kubayanda